

§ 1.336

(16) The need to deter the respondent and others from any engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the judicial officer from considering any other factors that in any given case may mitigate or aggravate the acts for which penalties and assessments are imposed.

§ 1.336 Initial decision of the ALJ.

(a) The ALJ shall issue an initial decision, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues for every claim or statement with respect to which a penalty or assessment was proposed:

(1) Whether any claim or statement identified in the complaint violates § 1.303 of this part;

(2) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors described in § 1.335 of this part.

(c) The ALJ shall serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall include with the initial decision a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file notice of appeal with the judicial officer. The ALJ may extend the time period for serving the initial decision on the parties.

(d) Unless the initial decision of the ALJ is timely appealed to the judicial officer, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1.337 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the ini-

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tial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the judicial officer in accordance with § 1.338 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the judicial officer in accordance with § 1.338 of this part.

§ 1.338 Appeal to the judicial officer.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the judicial officer in accordance with this section. The judicial officer of USDA shall consider all appeals to the Secretary under this subpart and render a decision on behalf of the Secretary.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 1.337 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.